

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Communications Assistance for ) CC Docket No. 97-213  
Law Enforcement Act )

To the Commission:

**COMMENTS OF EPIC, EFF AND THE ACLU**

The Electronic Privacy Information Center ("EPIC"), the Electronic Frontier Foundation ("EFF") and the American Civil Liberties Union ("ACLU") respectfully submit these Comments in response to the Commission's *Public Notice* released in the above-captioned proceeding soliciting comments on petitions for extension of the date for complying with the assistance capability requirements of the Communications Assistance for Law Enforcement Act ("CALEA").<sup>1/</sup> EPIC, EFF and the ACLU are the leading public interest organizations committed to protecting the privacy rights of Americans, and they strongly urge the Commission to extend the time for compliance with CALEA in order to ensure that privacy rights are fully protected under the law.

CALEA requires telecommunications carriers to ensure that their equipment, facilities and services will meet assistance capability requirements that enable law enforcement to conduct authorized electronic surveillance. Under CALEA, the deadline for carriers to comply with these obligations is October 25, 1998. The Commission has received a petition from the Telecommunications Industry Association; a

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<sup>1/</sup> In the Matter of Communications Assistance for Law Enforcement, CC Docket No. 97-213, *Public Notice*, DA 98-726 (April 20, 1998).

joint petition from AT&T Wireless Services, Lucent Technologies Inc. and Ericsson Inc.; and a joint petition from the United States Telephone Association ("USTA"), the Cellular Telecommunications Industry Association ("CTIA") and the Personal Communications Industry Association ("PCIA"), each requesting that the Commission extend the implementation deadline for CALEA. It is undisputed that CALEA-compliant hardware and software are currently not available and that industry will not be able to meet the compliance deadline. Thus, at issue is not whether an industry-wide extension is necessary, but rather whether the Commission has the authority to grant such an extension. As discussed below, CALEA clearly grants the Commission such authority.

**I. SECTION 107(b) GIVES THE COMMISSION AUTHORITY TO EXTEND THE OCTOBER 1998 DEADLINE.**

Section 107(b) of CALEA (captioned "Commission Authority"), grants the Commission the authority to intervene if industry associations fail to issue or issue deficient technical requirements or standards for complying with CALEA obligations. The only prerequisite to the Commission exercising this authority has been satisfied -- the FBI and other entities have petitioned the Commission to establish technical requirements and standards that meet CALEA requirements and protect privacy.

Section 107(b)(5) of CALEA grants the Commission the authority to "provide a reasonable time and conditions for compliance with and the transition to any new standards" adopted by the Commission. This authority necessarily encompasses the authority to extend or toll the October 25, 1998 compliance deadline. If a "reasonable time" to comply with new standards adopted by the Commission exceeds the October 25,

1998 deadline, the only means by which the Commission could exercise the authority clearly granted to it by Section 107(b)(5) would be to toll or extend that deadline.

In adopting Section 107, Congress clearly recognized that the FBI, telecommunications carriers or other interested persons may not agree with the industry's standards and implementation of CALEA requirements. Congress further recognized that, in the event that the Commission is petitioned to establish technical requirements or standards, the Commission must have the authority to adopt a reasonable implementation schedule. Indeed, the House and the Senate concurred that "[i]f an industry technical requirement is set aside or supplemented by the FCC, the FCC is required to . . . establish a reasonable time and conditions for compliance with and transition to any new standard."<sup>2/</sup> Again, this statement from Congress necessarily contemplates tolling or extending the October 1998 deadline established by the statute.

As the Commission has now embarked on establishing new standards pursuant to Section 107(b), its statutory duty is to "provide a reasonable time and conditions for compliance with and transition to" the new standards. Accordingly, the Commission should toll indefinitely the October 1998 deadline for complying with CALEA-obligations. A new deadline should be established once the Commission has adopted new standards and can then determine a "reasonable time" for implementing those standards.

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<sup>2/</sup> H. Rep. No. 827, 103d Cong., 2d Sess. 27 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3489, 3507; S. Rep. No. 402, 103d Cong., 2d Sess. 27 (1994)(to accompany S. 2375).

**II. COMMISSION ALSO HAS AUTHORITY TO EXTEND THE OCTOBER 1998 DEADLINE UNDER SECTION 107(c).**

Section 107(c) of CALEA provides a procedure for carriers to obtain on a carrier-specific basis an extension for complying with CALEA obligations. The Commission may grant an extension if, after consulting with the Attorney General, the Commission determines that compliance by a carrier with the CALEA requirements is not reasonably achievable through available technology. Currently, the technology necessary to comply with CALEA is unavailable on an industry-wide basis. That is undisputed. *Every* telecommunications carrier would be able to satisfy the criteria for obtaining an extension under Section 107(c). And indeed, through their trade associations -- USTA, CTIA and PCIA, which collectively represent almost 100 percent of the industry -- virtually all telecommunications carriers have requested an extension.

Section 107(c) does not limit the Commission's ability to extend the implementation deadline to only carrier-specific petitions. Rather, it supplements the extension authority granted to the Commission in Section 107(b) by also providing a means for the Commission to address circumstances unique to a particular carrier.

In this instance, the circumstances preventing any one carrier from being able to comply with the October 1998 deadline are not unique. On the contrary, every telecommunications carrier lacks access to the necessary hardware and software to satisfy the CALEA requirements. To require that every carrier file an individual petition pursuant to Section 107(c) would result in a tremendous misuse of the Commission's and industry's resources. If the Commission's declines to toll the October 1998 deadline

under Section 107(b), the Commission should grant a two-year, industry-wide extension under Section 107(c).

### CONCLUSION

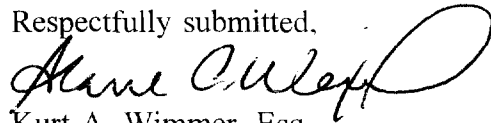
CALEA provides the Commission with the necessary authority to toll the implementation deadline once the Commission has been petitioned to establish implementation standards. The Commission should act expeditiously pursuant to this authority and toll the October 25, 1998 deadline. The Commission and interested parties will then be able to focus on correcting the deficiencies in the industry's interim standard published by the Telecommunications Industry Association. The new implementation deadline should be tied to the establishment of the new standards.

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